



February 12, 2002

Mr. Joe F. Grubbs
County & District Attorney
County of Ellis
1201 N. Highway 77, Suite B
Waxahachie, Texas 75165-5140

OR2002-0648

Dear Mr. Grubbs:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 158520.

The Red Oak Police Department (the “department”) and the Ellis County District Attorney (the “district attorney”) received a written request for all investigative records pertaining to an automobile “accident” that occurred on January 13, 2001.¹ You explain the police investigation did not concern a traffic accident, but rather an alleged criminal offense. You contend that the requested information is excepted from required public disclosure pursuant to sections 552.101, 552.103, and 552.108 of the Government Code.

You specifically contend that the requested information is excepted from disclosure under subsections 552.108(a)(1) and 552.108(a)(2) of the Government Code. Please note that the protections offered by subsections 552.108(a)(1) and 552.108(a)(2) are, generally speaking, mutually exclusive. Section 552.108(a)(1) generally applies to information held by law enforcement agencies that pertains to pending criminal investigations or prosecutions. Section 552.108(a)(2) protects law-enforcement records that pertain to criminal investigations and prosecutions that have concluded in a result other than a criminal conviction or deferred adjudication. However, based on your representation that the information at issue relates to a criminal investigation that resulted in a “no bill,” we conclude that in this instance you have met your burden of demonstrating the applicability of section 552.108(a)(2). The department and the district attorney may therefore withhold most of the information at issue pursuant to section 552.108(a)(2) of the Government Code.

¹You state that you are requesting this decision “on behalf of the Red Oak Police Department and the Ellis County and District Attorney’s Office.”

Section 552.108 does not, however, except from required public disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). Because you have raised no other applicable exception to disclosure, the department and the district attorney must release these types of information in accordance with *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).²

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

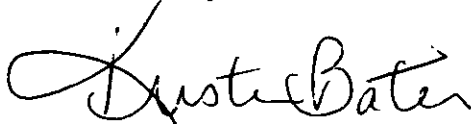
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

²Because we resolve your request under section 552.108(a)(2), we do not address the applicability of the other exceptions you raised except to note that basic information is not excepted from public disclosure under section 552.103 of the Government Code. See Open Records Decision No. 597 (1991).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script, appearing to read "Kristen Bates".

Kristen Bates
Assistant Attorney General
Open Records Division

KAB/RWP/sdk

Ref: ID# 158520

Enc: Submitted documents

c: Mr. Michael A. Zimmerman
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P.O. Box 88
Waco, Texas 76703
(w/o enclosures)